



SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to update the requirements and standards for review of projects, amend the rules dealing with groundwater withdrawals, and revise the regulatory triggers related to grandfathered sources. These rules are designed to enhance and improve the Commission's existing authorities to manage the water resources of the basin, add regulatory clarity, and to achieve efficiencies and reduced costs in the preparation and review of applications for groundwater renewals.

DATES: Comments on the proposed rulemaking may be submitted to the Commission on or before May 17, 2021. The Commission has scheduled a public hearing on the proposed rulemaking to be held by telephone on May 6, 2021. The location of the public hearing is listed in the **ADDRESSES** section of this document.

In addition, the Commission will hold two informational webinars explaining the proposed rulemaking on April 6 and April 14, 2021. Instructions for registration for the webinars will be posted on the Commission's website.

ADDRESSES: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to regcomments@srbc.net. The public hearing will be held by telephone rather than at a physical location. Conference Call # 1-888-387-8686, the Conference Room Code # 9179686050.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., General

Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail:

joyler@srbc.net. Also, for further information on the proposed rulemaking, visit the

Commission's website at <http://www.srbc.net>.

SUPPLEMENTARY INFORMATION: The Commission is proposing revisions to amend several sections of its regulations to provide clarity to project sponsors, target only the most appropriate activities, and establish a more efficient and effective framework to review groundwater withdrawals, which can be data-intensive and time consuming and costly for both the Commission and the project sponsor. The proposed revisions also modify the aquifer testing requirements to include an Alternative Hydrogeologic Evaluation(AHE) process for certain new and existing projects and establishes where an aquifer test or AHE evaluation is not required. As a companion to this rulemaking, the Commission is also releasing three policies related to groundwater reviews to be open for public comment simultaneously with this proposed rulemaking: a revised Aquifer Testing Plan Guidance; a new policy on Alternative Hydrogeologic Evaluations; and a new policy on Pre-Drill Well Site Review. The Commission recognizes that groundwater management will be a challenge under changing climate conditions. These rules will ensure wells are permitted and monitored in efficient but robust ways that allow the Commission to provide dynamic decision making as impacts of climate change manifest. Further, the proposed rules and policies will help reduce costs, both to systems that are smaller and have economic challenges, including communities with environmental justice concerns.

The Commission is also proposing revisions to update its regulations dealing with the triggers that lead to the loss of grandfathering, consumptive water use by the natural

gas industry, the transfer of projects, as well as general updates to its project review application procedures.

In recognition of the Commission's priority of pursuing environmental justice initiatives, Commission staff will conduct inclusive outreach on this proposal to maximize public awareness and participation in the rulemaking process by underrepresented communities.

Definitions — Small and Medium Capacity Withdrawals — 18 CFR 806.3

Definitions of small and medium capacity sources are added to 18 CFR 806.3. The jurisdictional limit for Commission review of a withdrawal is 100,000 gallons per day (gpd) over a consecutive 30-day average. However, over time, the regulations developed various mechanisms that also apply the Commission's regulatory oversight to small (under 20,000 gpd) and medium (between 20,000 and 100,000 gpd) capacity withdrawals. Current groundwater regulations, policy, and review standards subject these sources to the same level of review and associated cost implications as large volume withdrawals, regardless of their potential risk of adverse impact. The new definitions and classification of withdrawals based on size clarifies, and in some cases, reduces the level of effort by a project sponsor to seek approval to use small and medium capacity sources as well as reduces the level of review by the Commission based on the potential risk for adverse impact. To the extent these sources in some cases are utilized by smaller communities with financial challenges and serving disadvantaged communities, it will provide more flexibility moving forward for the Commission to consider appropriate measures for such consideration.

Projects Requiring Review and Approval —18 CFR 806.4

Changes are proposed to § 806.4 regarding projects requiring review and approval. The proposed revisions eliminate § 806.4(a)(2)(iii) that captures small and

medium capacity sources supplying water to a regulated consumptive user. New language has been proposed to § 806.4(a)(1) clarifying the regulatory requirements for small and medium capacity withdrawals related to a consumptive use approval.

Constant-Rate Aquifer Testing and Standards for Water Withdrawals —18 CFR

806.12 & 806.23

The Commission is seeking to revise the scope of its constant-rate aquifer testing requirements and standards for groundwater withdrawals to encourage the use of existing data and review projects in a manner commensurate with the level of risk posed by a withdrawal. The proposed processes will allow the Commission's review to more adequately consider data and information that include changing conditions in the environment and with climate to allow for more sustainable and resilient withdrawals.

First, as related to small capacity sources, the Commission finds that their size significantly limits the likelihood of adverse impacts to aquifers, surface water features or competing water users and the Commission is able to utilize methods other than aquifer testing to assess the impact of withdrawal from these small sources. Accordingly, the rule proposes § 806.12(j) to provide that these small capacity sources do not generally need an aquifer test, but does retain the flexibility for the Executive Director to determine that one is needed for evaluation of resource issues in limited circumstances. Similarly, § 806.23(b)(7) is proposed to provide more focused standards for small capacity sources.

Second, existing groundwater regulations, policy and review standards include limited differentiation for renewals versus proposed new withdrawals. This lack of differentiation limits effective consideration of previous aquifer testing results and long-term operational data for some existing projects, resulting in increased renewal costs to regulated projects and the Commission. The proposed rules provide better clarity and the streamlining of review standards, especially if the project sponsor is not changing its withdrawal quantities as part of the renewal. The rule proposes a new paragraph, §

806.12(h), which provides that projects undergoing a renewal with the Commission that have also previously completed an aquifer test under the Commission's approval can satisfy the aquifer testing requirement by relying on the prior test and providing an updated groundwater availability estimate. This is conditioned on the project sponsor seeking to operate at the previously tested rate of withdrawal. Section 806.23(b)(6) is proposed to provide more differentiation between reviews for renewed or otherwise existing sources versus new projects. This differentiation includes relying on prior testing and operational data of existing projects, as well as the alternative hydrogeologic evaluation established in § 806.12(i) and the related guidance document also proposed. The proposed rule also enshrines the Commission's current flexibility to require an aquifer test and/or condition docket approvals.

Third, as related to aquifer testing and an aquifer testing waiver, existing regulation, unless formally waived, requires aquifer testing of all groundwater wells regardless of setting, size of withdrawal, available data, and status as a new, renewing or existing source. The existing waiver process used to avoid aquifer testing is not well understood by projects or consultants and frequently leads to increased costs to both the Commission and projects due to confusion about the process and incomplete submittals. The proposed rule amends § 806.12 to improve this process by adding clarity and more certainty for project sponsors but retaining the flexibility that the Commission currently has in these reviews. Section 806.12(i) is added to provide for the Alternative Hydrogeologic Evaluation (AHE) process to replace the previous waiver process. The Commission is also proposing a draft AHE policy and a revised Aquifer Testing Guidance that provide further clarity and a revised technical approach for these evaluations.

Finally, § 806.12(g) establishes that the hydrogeologic evaluation requirements in § 806.12 do not apply to withdrawals related to mine dewatering, construction

dewatering, water resources remediation and acid mine drainage (AMD) remediation facilities to support the existing regulatory review provisions for these types of facilities codified in § 806.14(b)(6), (d)(6) and 806.23(b)(5). Mining and remediation projects in particular are heavily regulated by our member jurisdictions, and the proposed rule would allow the Commission to rely on the work previously done in order to get member jurisdiction approval for these activities.

Contents of Application —18 CFR 806.14

The proposed rule offers edits to § 806.14 to clarify and improve the readability of the regulation and to account for the changes to § 806.12. These changes generally fall into two categories: 1) those that increase efficiency through simplification and clarification and 2) those that establish updated requirements for how groundwater applicants provide data and information required by § 806.12. The changes recognize prior determinations (including waivers of § 806.12) by the Commission staff which establish clear requirements for projects in those situations, remove uncertainty regarding previous determinations of aquifer testing requirements, and increase efficiency for both application preparation and the review of renewal and modification applications by Commission staff. These changes will greatly help projects by allowing them to avoid additional unnecessary aquifer testing or data collection, especially in those situations where the requirements had been previously met. These changes are important with the larger number of projects that will be seeking renewals for the first time over the next ten years.

Projects Requiring Review and Approval & Transfer of Approvals —18 CFR 806.4 & 806.6

Grandfathering, the exemption for certain pre-existing projects to operate without formal review and approval, can be lost by a variety of mechanisms. The Commission

has been overseeing the successful implementation of its grandfathering registration program. This program was developed to help track an estimated one billion gallons of water use a day by grandfathered projects, while allowing them to preserve the grandfathered status of their consumptive uses and withdrawals through registration with the Commission. This program has been successfully filling in the data gaps created by grandfathered projects and is thus a valuable effort in the improvement of the water management of the basin. With this program in place, the Commission proposes to eliminate most of the current triggers for losing grandfathering and retain just two: 1) increasing the usage above the registered amount and 2) through a transfer of ownership.

First, minor changes are proposed to §§ 806.4(a)(1)(iii) and 806.4(a)(2)(iv) to reflect the closing of the grandfathering registration window. Because the term “pre-compact consumptive use” is defined, it is added to Section 806.4(a)(1)(iii). Similarly, the regulatory trigger dates are no longer needed in Section 806.4(a)(2)(iv); however, they were relocated to § 806.4(a)(2)(i) because they still have regulatory significance and cannot be eliminated altogether.

Second, section 806.4(a)(2)(ii) is revised to remove the language that acted as a trigger for the loss of grandfathering when a source was added or any source of a project was increased in quantity. The language related to the review of increases to existing sources is removed from (a)(2)(ii) and is now contained in the revised § 806.4(a)(2)(iii). The revised § 806.4(a)(2)(ii) provides that a regulated project that adds a new source must make an application for review and approval *of that source*, but it does not serve as a trigger for loss of grandfathering and subject the entire project to review, as it previously did. Similarly, revised § 806.4(a)(2)(iii) provides that any previously approved withdrawal that increases above its approval amount must make an application for review and approval of the increased amount. However, this increase does not subject

the entire project to review and approval, as it previously did, which was also a trigger for loss of grandfathering.

Third, for diversions, minor adjustments to §§ 806.4(a)(3)(iii) and (iv) were needed to make the provisions related to grandfathered diversions be consistent with the changes made to grandfathered withdrawals and consumptive uses.

Fourth, change of ownership remains a pathway for the loss of grandfathering under §§ 806.4(a)(1)(iv), (a)(2)(v), and (a)(3)(iv). This is also reflected in § 806.6(b). All of these provisions are simplified and revised to reflect that the grandfathering registration period is now closed.

Fifth, a new paragraph § 806.6(d) is added to provide the new sponsor of a transferred project time to collect operational data that would allow it to take advantage of the AHE and not have to immediately prepare applications for the source(s) that have lost grandfathering. These changes are also consistent with the direction provided by the Commissioners in Resolution 2017-12 related to inter-municipal transfers.

Under the proposed rule, a new project owner with registered grandfathered sources undergoing a qualified change in ownership would be required to comply with the existing monitoring requirements under § 806.30 for all sources, along with any other conditions necessary to effectuate the transfer. Additionally, for any unapproved sources, the approved transfer will act as the project's approval for a period of five years, at which point, the project sponsor must submit an application for review and approval of the sources. This would provide ample time for the new project sponsor to collect operational data for these existing sources and potentially avoid the cost of an aquifer test.

Related to transfers, the proposed rule eliminates the corporate reorganization exception in § 806.4(b). This exception caused confusion to project sponsors, was difficult to implement and was infrequently used.

Standards for Consumptive Uses of Water for Natural Gas Projects—18 CFR

806.22(f)

Section 806.22(f) is amended to update the Commission’s regulation of consumptive water use for unconventional natural gas extraction. Commission staff conducted an internal review of processes and procedures used by its Approval by Rule program and has developed these changes to update the regulations to address the evolution of this program and the industry.

Section 806.22(f)(11)(ii) is amended to include captured stormwater, which includes corresponding changes to § 806.4(a)(3)(v) through (vii) and adding a definition of “captured stormwater” to § 806.3. The purpose of this change is to make clear that this captured stormwater is covered under the Commission’s regulatory approvals, which is consistent with how these regulations have been interpreted.

The proposed rule also eliminates the concept of “hydrocarbon water storage facilities” from the regulations. There are two reasons for this change. First, this concept was developed early on in the Commission’s initial response to the development of the unconventional natural gas industry. However, the industry’s water use evolved in a manner where approvals of this type were never issued by the Commission. Second, the Commission began regulating and tracking consumptive use by the natural gas industry at the source of withdrawal. This method of tracking has proven itself to be effective and enforceable and obviates the need for the water storage facility provisions, both now and in the future. Accordingly, the Commission is proposing corresponding changes to §§ 806.3, 806.22(f)(11)(iv), and 806.22(f)(14).

Section 806.22(f)(4) is revised to eliminate some of the specific details for what is ultimately captured in the post-hydrofracture report. This report is still required; however, this revision makes it easier for the Commission to revise the items requested in

the report and the Commission intends to align this report with the post-drilling completion reports filed with the member jurisdictions to avoid any duplication of effort.

Sections 806.22(f)(12) and (13) are amended to track and support the Commission's current practices with respect to the use of non-public and public water suppliers by the natural gas industry as a source for water.

Other Changes

Interconnections. The Commission is proposing to eliminate language in § 806.4(a)(2) that subjected public water supply interconnections to specific review and approval requirements. The Commission is adding language dealing with interconnections as a part of a project in its review standards for water withdrawals in § 806.23. Public water supply interconnections are closely regulated by member jurisdictions and these revisions allow the Commission to avoid any duplication of effort.

Diversions for Municipalities on the Basin Divide. The proposed rule adds a paragraph § 806.4(a)(3)(viii) that would allow the diversion of drinking water or sewage into or out of the basin without applying for approval from the Commission. The diversion would have to be by or through a publicly or privately owned public water supplier or wastewater treatment works and, for out of basin diversions, service a municipality that was on or adjacent to the basin divide in order to be eligible for the exemption. The primary purpose of the Commission's regulations for reviewing diversions of water into the basin is to ensure that the water quality of the incoming water is not a threat to affect the water quality of the water resources of the basin. Where municipalities may cross the basin divide for the operation of drinking water and wastewater systems that are regulated by the member jurisdictions, any water quality concerns are fully mitigated by the regulatory oversight of the member jurisdictions and additional review by the Commission is unnecessary.

Notice Provisions. Changes are proposed to § 806.15 to clarify, update, and improve the readability of the regulation, as well as to align the notice requirements for applications for minor modifications, notices of intent (NOIs) for general permits, approvals by rule under § 806.22(e), approvals by rule (ABR) under § 806.22(f)(9) and source approvals under § 806.22(f)(13). The notice requirements in existing §§ 806.15(d), (e) and (f) are deleted and consolidated in part in a new § 806.15(g). The notice for groundwater withdrawals under § 806.15(b)(1) is revised to provide notice to property owners within a quarter mile radius of the withdrawal.

Minor Modifications. In 2015, the Commission added § 806.18 providing a process for minor modifications. This addition has been successful in creating an efficient method for the Commission to process changes to its approvals that are primarily administrative and do not rise to the level of major modifications. Based on the Commission's experience since 2015, it is proposing to modify and add new categories of changes that would qualify as minor modifications. The addition of §§ 806.18(c)(10) and (11) also aid in the implementation of the Consumptive Use Mitigation Policy adopted in March 2020.

Consumptive Use Approvals—ABR(e). Consumptive users who are entirely sourced by public water supply, stormwater, wastewater, or reused or recycled water are eligible for a streamlined approval by rule under § 806.22(e). Section 806.22(e)(6) is revised to allow for discontinuance as a consumptive use mitigation option for these approvals to be consistent with and support the recently adopted Consumptive Use Mitigation Policy. Section 806.22(e)(8) is revised to allow the Executive Director to permit a project sponsor to continue to use the ABR(e) process if they use a small capacity well for consumptive use or for use only for supply of potable water. These small wells are below the Commission's regulatory thresholds and their use should not be

a reason to disallow the use of the ABR(e) process for project sponsors who use them to service their facilities.

Emergency Certificates. Section 806.34 is revised to allow an emergency certificate to be issued by the Executive Director for a term that allows the Commission to place the extension of a certificate on its public hearing notice. Currently, the rule requires that these certificates are valid until the next scheduled Commission meeting where they can be extended by the Commissioners, but typically this occurs after the public hearing has already been noticed and held. This change allows for greater public input and transparency when the project sponsor seeks the Commission's approval to extend the term of these certificates for a longer period of time.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In § 806.3:

- a. Add, in alphabetical order, the definition for “Captured stormwater”;
- b. Remove the definition of “Hydrocarbon water storage facility”; and
- c. Add, in alphabetical order, the definitions for “Medium capacity source” and “Small capacity source”.

The additions and revisions read as follows:

§ 806.3 Definitions.

* * * * *

Captured stormwater. Precipitation or stormwater collected on the drilling pad site, including well cellar water, waters from secondary containment, and water collected from post construction stormwater management features.

* * * * *

Medium capacity source. A ground or surface water source with a withdrawal of more than 20,000 but less than 100,000 gallons per day over a consecutive 30 day-average.

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Small capacity source. A ground or surface water source with a withdrawal of 20,000 gallons or less per day over a consecutive 30-day average.

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3. Revise § 806.4 to read as follows:

§ 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation, to aquifer testing under § 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) *Consumptive use of water.* Any consumptive use project described in this paragraph (a)(1) shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water except a small capacity source, shall also be subject to the standards set forth in § 806.23 as the Commission deems necessary. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this

section. Provided the commission determines that low flow augmentation projects sponsored by the commission's member states provide sufficient mitigation for agricultural water use to meet the standards set forth in § 806.22, and except as otherwise provided in this paragraph (a)(1), agricultural water use projects shall not be subject to the requirements of this paragraph (a)(1). Notwithstanding the foregoing, an agricultural water use project involving a diversion of the waters of the basin shall be subject to such requirements unless the property, or contiguous parcels of property, upon which the agricultural water use project occurs is located at least partially within the basin.

(i) Any project initiated on or after January 23, 1971, involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(ii) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(iii) With respect to projects with pre-compact consumptive use:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That failed to register its consumptive use in accordance with subpart E of this part.

(iv) Any project, regardless of when initiated, involving a consumptive use of an average of 20,000 gpd or more in any consecutive 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements

of paragraph (b) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(2) *Withdrawals.* Any project, including all of its sources, described in this paragraph (a)(2) shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph (a)(2) shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801.

(i) Any project initiated on or after July 13, 1978 for groundwater or November 11, 1995 for surface water withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water source, or any project initiated after January 1, 2007 withdrawing a consecutive 30-day average of 100,000 gpd or more from a combination of sources.

(ii) Any new source added to projects with previously approved withdrawals by the Commission.

(iii) Any withdrawal increased above that amount which was previously approved by the Commission.

(iv) With respect to projects with grandfathered withdrawals:

(A) Registered in accordance with subpart E of this part that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or in combination from all sources to an average of 100,000 gpd or more in any consecutive 30-day period; or

(C) That failed to register its withdrawals in accordance with subpart E of this part.

(v) Any project, regardless of when initiated, involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more, from either groundwater or surface water sources, or in combination from both, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(3) *Diversions*. Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, the projects described in paragraphs (a)(3)(i) through (iv) of this section shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (a)(3)(v) and (vi) of this section shall be subject to regulation pursuant to § 806.22(f).

(i) Any project initiated on or after January 23, 1971, involving the diversion of water into the basin by any amount, or involving a diversion of water out of the basin of an average of 20,000 gallons of water per day or more in any consecutive 30-day period.

(ii) With respect to diversions previously approved by the Commission, any project that will increase a diversion above the amount previously approved.

(iii) With respect to diversions initiated prior to January 23, 1971, any project that will increase a diversion into the basin by any amount, or increase the diversion of water out of the basin by any amount.

(iv) Any project, regardless of when initiated, involving the diversion of water into the basin by any amount or involving a diversion of water out of the basin by an average of 20,000 gallons of water per day or more in any consecutive 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the Commission approval for such project is transferred pursuant to § 806.6.

(v) The interbasin diversion of any flowback or production fluids, tophole water and captured stormwater from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, provided it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction, shall not be subject to separate review and approval as a diversion under this paragraph if the generating or receiving pad site is subject to an Approval by Rule issued pursuant to § 806.22(f) and provided all monitoring and reporting requirements applicable to such approval are met.

(vi) The diversion of flowback or production fluids, tophole water and captured stormwater from a hydrocarbon development project for which an Approval by Rule has been issued pursuant to § 806.22(f), to an out-of-basin treatment or disposal facility authorized under separate governmental approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph, provided all monitoring and reporting requirements applicable to the Approval by Rule are met and it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(vii) The diversion of any flowback or production fluids, tophole water and captured stormwater from hydrocarbon development projects located outside the

basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph (a)(3), provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(viii) The diversion of drinking water and/or municipal wastewater out of the basin to a municipality on or straddling the basin divide if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member jurisdiction shall not be subject to review and approval as a diversion under this paragraph (a)(3) of this section or as a consumptive use under paragraph (a)(1) of this section.

(ix) The diversion of drinking water and/or municipal wastewater into the basin to a municipality if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member jurisdiction shall not be subject to review and approval as a diversion under paragraph (a)(3) of this section.

(4) *Crossing state boundaries.* Any project on or crossing the boundary between two member states.

(5) *Significant effect.* Any project in a member state having a significant effect on water resources in another member state.

(6) *Comprehensive plan.* Any project which has been or is required to be included by the Commission in its comprehensive plan, or will have a significant effect upon the comprehensive plan.

(7) *Determination.* Any other project so determined by the commissioners or Executive Director pursuant to § 806.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

(8) *Natural gas*. Any unconventional natural gas development project in the basin involving a withdrawal, diversion or consumptive use, regardless of the quantity.

(9) *General permit*. Any project subject to coverage under a general permit issued under § 806.17.

(b) Any project that did not require Commission approval prior to January 1, 2007, and undergoing a change of ownership, shall be exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v) or (a)(3)(iv) of this section if it is a:

(1) Transfer of a project to the transferor's spouse or one or more lineal descendants, or any spouse of such lineal descendants, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendants, or any spouse of such lineal descendants, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendant(s) and their spouses, continues to be 51 percent or greater; or

(2) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock, or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

4. Amend § 806.6 by revising paragraphs (a)(5) and (b) and by adding paragraph (d) to read as follows:

§ 806.6 Transfer of approvals.

(a) * * *

(5) If the existing project has an unapproved withdrawal, consumptive use and/or diversion listed in paragraph (b) of this section, the transfer shall be conditioned to require the submission of a new application for review and approval of the unapproved withdrawal, consumptive use and/or diversion consistent with §§ 806.4 and 806.14 and paragraph (d) of this section.

* * * * *

(b) Previously unapproved activities associated with a project subject to transfer under paragraph (a) include:

(1) The project has an associated pre-compact consumptive water use that has not had mitigation approved by the Commission.

(2) The project has an associated diversion that was initiated prior to January 23, 1971.

(3) Projects registered under subpart E of this part.

* * * * *

(d) Any unapproved activities associated with a transferred project shall be subject to the following:

(1) The transfer approval shall be conditioned to include monitoring requirements under § 806.30 for all previously unapproved sources and activities.

(2) The transfer approval may include any other conditions consistent with this part deemed necessary by the Executive Director.

(3) The approved transfer will act as the unapproved activity's temporary approval for a period of five years, at which point, the project sponsor shall submit an application for review and approval consistent with subpart B of this part.

(4) The Executive Director may require hydrogeologic evaluation under § 806.12 and/or formal review and approval of any of the previously unapproved sources sooner if those sources show a substantial likelihood of environmental harm, interference with other water users or water availability issues.

5. Revise § 806.12 to read as follows:

§ 806.12 Hydrogeologic evaluation. Evaluation of groundwater withdrawal projects requires a hydrogeologic evaluation, which may be an aquifer test in accordance with an

approved plan or an alternative hydrogeologic evaluation in conformance with this section.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform an aquifer test.

(b) Unless an alternative hydrogeologic evaluation method is approved, the project sponsor shall prepare an aquifer test plan for prior review and approval by Commission staff before testing is undertaken. Such plan shall include a groundwater availability analysis to determine the availability of water during a 1-in-10-year recurrence interval.

(c) Unless otherwise specified, approval of a test plan is valid for two years from the date of approval.

(d) Approval of a test plan shall not be construed to limit the authority of the Commission to require additional testing or monitoring.

(e) The project sponsor may be required, at its expense, to provide temporary water supply if an aquifer test results in interference with an existing water use.

(f) Review of submittals under this section may be terminated by the Commission in accordance with the procedures set forth in § 806.16.

(g) This section does not apply to withdrawals related to mine dewatering, water resources remediation or AMD facilities, provided the activity is governed by another regulatory agency.

(h) Sources undergoing renewal that can provide an interpretative hydrogeologic report that documents the results of a Commission approved aquifer test or documentation of an approved prior waiver by the Commission may meet the requirements of § 806.12 for that previously approved groundwater source.

(i) In lieu of completing a Commission-approved aquifer test, the project sponsor may submit an Alternative Hydrogeologic Evaluation (AHE) that provides supporting

information equivalent to that which would be obtained from completing an approved aquifer test under paragraph (a) of this section. This supporting information includes, but is not limited to, prior aquifer testing data, the withdrawal setting and location, existing site specific operational data, and prior Commission approved waivers of aquifer testing requirements. Commission staff may approve an AHE for a project or require completion of a Commission approved aquifer test in accordance with paragraph (a) of this section.

(j) This section does not apply to withdrawals from a small capacity source, unless otherwise determined by the Executive Director.

6. Amend § 806.14 by:

- a. Revising paragraphs (a)(2) and (3), (b)(1) and (2), and (c)(2), (3) and (5);
- b. Adding paragraphs (c)(10) and (11); and
- c. Revising paragraph (d).

The revisions and additions read as follows:

§ 806.14 Contents of application.

(a) * * *

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: purpose, proposed quantity to be withdrawn or consumed, if applicable, and description of all sources, consumptive uses and diversions related to the project.

* * * * *

(b) * * *

(1) *Surface Water*. (i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife and natural environment features.

(v) For new projects and major modifications to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a water with exceptional water quality, or as required by the Commission.

(2) *Groundwater.* (i) With the exception other projects which are addressed in paragraph (b)(6) of this section, the project sponsor shall demonstrate that requirements of § 806.12 have been met by providing one of the following:

(A) An interpretive report that includes the results of a Commission approved aquifer test and an updated groundwater availability estimate if changed from the aquifer test plan,

(B) An approved AHE,

(C) A prior determination by the Commission staff under § 806.12(h) that the intent and requirements of § 806.12 have been met along with an updated groundwater availability estimate.

(ii) Water use and availability.

(iii) Project setting, including nearby surface water features.

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

* * * * *

(c) * * *

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: purpose, proposed quantity to be withdrawn or consumed if applicable, description of all sources, consumptive uses and diversions related to the project and any proposed project modifications.

* * * * *

(5) An as-built and approved metering plan that conforms to § 806.30.

* * * * *

(10) Changes to the facility design.

(11) Any proposed changes to the previously authorized purpose.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) *Surface water.* (i) Description and as-built of intake structure.

(ii) For renewals seeking to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) *Groundwater.* (i) The project sponsor shall demonstrate that requirements of § 806.12 have been met by providing one of the following:

(A) Provide an interpretive report that includes the results of a Commission approved aquifer test and an updated GW availability estimate if changed from the aquifer test plan;

(B) An approved AHE; or

(C) A prior determination by the Commission staff under § 806.12(h) that the intent and requirements of § 806.12 have been met.

(ii) An interpretative report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed materials to demonstrate satisfaction of § 806.12, which may include a hydrogeologic report from previous aquifer testing, an approved AHE or prior determination of waiver of aquifer testing.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year drought recurrence interval under the existing conditions within the recharge area and predicted for term of renewal (i.e., other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

(3) *Consumptive use.* (i) Consumptive use calculations.

(ii) Mitigation plan, including method of consumptive use mitigation.

(4) *Into basin diversion.* (i) Provide the necessary information to demonstrate that the project will continue to meet the standards in § 806.24(c).

(ii) Identification of the source and current water quality characteristics of the water to be diverted.

(5) *Out of basin diversion.* (i) Provide the necessary information to demonstrate that the project will continue to meet the standards in § 806.24(b).

(6) *Other projects.* Other projects, including without limitation, mine dewatering, water resources remediation projects, and AMD facilities that qualify as a withdrawal.

(i) In lieu of a hydrogeologic evaluation, a copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i) of this section.

(iii) Demonstration of continued need for expiring approved water source and quantity.

* * * * *

7. Revise § 806.15 to read as follows:

§ 806.15 Notice of application.

(a) Except with respect to paragraphs (e), (f), and (g) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county and the appropriate county agencies in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (d) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall be in a form and manner as prescribed by the Commission.

(b) For withdrawal applications submitted pursuant to § 806.4(a)(2) for new projects, major modifications, and renewals requesting an increase, the project sponsor shall also provide the notice required under paragraph (a) of this section to each property owner listed on the tax assessment rolls of the county in which such property is located and identified as follows:

(1) For groundwater withdrawal applications, the owner of any contiguous property that is located within a one-quarter mile radius of the proposed withdrawal location.

(2) For surface water withdrawal applications, the owner of any property that is riparian or littoral to the body of water from which the proposed withdrawal will be taken and is within a one-half mile radius of the proposed withdrawal location.

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property of such property owner is served by a public water supply.

(c) For projects involving a diversion of water out of the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the project proposing to use the diverted water is located. For projects involving a diversion of water into the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the withdrawal of water proposed for diversion is located.

(d) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt or the verified return receipt from a comparable delivery service for the notifications to agencies of member States, municipalities, counties and appropriate county agencies required under this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

(e) For Notices of Intent (NOI) seeking coverage under a general permit, the project sponsor shall provide notice of the NOI to the appropriate agency of the member State and each municipality and county and appropriate county agencies in which the project is located and any additional notice identified in the general permit.

(f) For applications for minor modifications and approvals by rule under § 806.22(e), the project sponsor shall provide notice of the application to the appropriate agency of the member State and each municipality and county and appropriate county agencies in the which the project is located.

(g) For NOIs seeking an approval pursuant to § 806.22(f), the project sponsor shall provide notice of the application to the appropriate agency of the member State, each municipality, county and appropriate county agencies, and the owner of the property on or in which the drilling pad site is located. For requests for approval submitted under § 806.22(f)(13), the project sponsor shall provide notice of the application to the appropriate agency of the member State, each municipality, county and appropriate county agencies in which the public water supply is located.

8. Amend § 806.18 by revising paragraph (c) to read as follows:

§ 806.18 Approval modifications.

* * * * *

(c) *Minor modifications.* The following are minor modifications:

- (1) Correction of typographical or other errors;
- (2) Changes to monitoring or metering conditions;
- (3) Addition, amendment or removal of sources of water for consumptive use or project descriptions;
- (4) Changes to the authorized water uses;
- (5) Changes to conditions setting a schedule for developing, implementing, and/or reporting on monitoring, data collection and analyses;
- (6) Changes to the design and minor changes to the location of intakes;
- (7) Increases to total system limits that were established based on the projected demand of the project; and

(8) Modifications of extraction well network used for groundwater remediation systems.

(9) Adjustments to a term of an approval to align the approval with a member jurisdiction approval or another docket approval by the Commission.

(10) Changes to the method of consumptive use mitigation to payment of the mitigation fee, providing for discontinuance, use of storage or an adequate conservation release in accordance with a previous Commission determination.

(11) Addition of stormwater as a source of consumptive use, including an increase to the total consumptive use related to the stormwater use.

(12) Extension of the date of commencement of a withdrawal, diversion or consumptive use established under § 806.31(b).

* * * * *

9. Amend § 806.22 by revising paragraphs (e)(6) and (8), and (f)(4) and (11) through (14) to read as follows:

§ 806.22 Standards for consumptive use of water.

* * * * *

(e) * * *

(6) *Mitigation.* The project sponsor shall comply with mitigation in accordance with paragraph (b)(1)(iii), (b)(2) or (3) of this section.

* * * * *

(8) *Decision.* The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved. Use of small capacity

sources or sources used only for supply of potable water may be appropriately included as a part of this approval by rule in the discretion of the Executive Director.

* * * * *

(f) * * *

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. The project sponsor shall submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

* * * * *

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f) (9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

(i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.

(ii) Captured stormwater, provided it is used only for drilling or hydrofracture stimulation.

(iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water, except a public water supply, approved by the

Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use and the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission. Use of the registered source shall not commence until the Commission acknowledges in writing that the registration is proper and complete.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, water withdrawals or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), public water supplies, or another approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(14) [Reserved]

* * * * *

10. Amend § 806.23 by revising paragraphs (b) introductory text and (b)(4), and adding paragraphs (b)(6) and (7), to read as follows:

§ 806.23 Standards for water withdrawals.

* * * * *

(b) Limitations on and considerations for withdrawals.

* * * * *

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources, interconnections or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, including interconnections, and support existing and proposed future withdrawals.

* * * * *

(6) Notwithstanding this paragraph, existing withdrawals that successfully complete the process in § 806.12(h) and (i) shall satisfy the standards in paragraph (b)(2) of this section. Further, evaluation of the withdrawal shall include reasonably foreseeable need and the need for total system limits, compliance with § 806.21, and any changes to the project or project location and setting.

(i) Approval of withdrawal limits on existing sources will not be set above the amount supported by the existing historical and current operating data or otherwise supported by the evaluation under § 806.12, and may be set at a different rate if supported by the evaluation required in this paragraph.

(ii) Any approvals shall include metering and measurement of parameters consistent with § 806.30, and may include conditions requiring monitoring of surface water features or other withdrawal sources.

(iii) If any reported metering or monitoring data or other information show a significant adverse impact to any consideration in paragraph (b)(2) of this section, the Commission may take actions necessary to eliminate the significant adverse

impact, including but not limited to requiring the project to undertake more data collection and analysis, aquifer testing and/or conditioning the docket approval.

(7) Notwithstanding this paragraph, small capacity sources shall be subject to any withdrawal limit, including total system limit, set by the Commission and shall include metering and measurement of parameters consistent with § 806.30.

11. Amend § 806.34 by revising paragraph (c)(2) to read as follows:

§ 806.34 Emergencies.

* * * * *

(c) * * *

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the next regular business meeting of the Commission where the extension of the certificate may be included in the notice for the next regularly scheduled public hearing for that business meeting.

* * * * *

Dated: March 15, 2021.

Jason E. Oyler

Secretary to the Commission.